



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002337
UI-2023-002338
First-tier Tribunal No:
PA/55800/2022
PA/55801/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 15 February 2024**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**BSK
KSK**

(anonymity order made)

Respondents

Representation:

For the Appellant: Miss Young, Senior Home Office Presenting Officer

For the Respondents: Miss Khan of Counsel

Heard at Phoenix House (Bradford) on 14 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, BSK and KSK are granted anonymity.

No-one shall publish or reveal any information, including the name or address of BSK and KSK, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. For ease of reference and consistency with the First-tier Tribunal decision, we shall hereafter refer to BSK and KSK as the Appellants, and the Secretary of State as the Respondent.
2. The Appellants were born on 9 December 1965 and 20 November 1996 respectively. They claim to be Afghani citizens. The Respondent asserts they are Indian citizens. The Appellants appealed against the decision of the Respondent dated 28 November 2022, refusing their protection claims.
3. The Respondent appealed against the decision of First-tier Tribunal Judge (FtTJ) Nazir, promulgated on 22 May 2023, allowing the appeals.
4. Following a hearing on 8 November 2023, the Upper Tribunal determined that the FtTJ had materially erred in applying the wrong test when considering the Appellants nationality in that he applied the lower standard of proof instead of the balance of probabilities. Having identified the wrong standard of proof, the FtTJ then assessed the evidence to that wrong standard.
5. The full reasons for that are contained in the Upper Tribunal's decision promulgated on 7 December 2023. The Upper Tribunal set aside the decision of Judge Nazir given the material errors of law made and acceded to the Appellants' Representatives submission that the appeal could remain in the Upper Tribunal as the appeal could be dealt with on submissions alone.
6. Miss Khan sought to reopen that issue and submitted that as the whole decision had been infected by the wrong standard of proof being applied, the appeal should in fact be remitted to the First-tier Tribunal. Miss Young agreed, that having been her submission at the hearing on 7 November 2023.

Discussion

7. The Tribunal Procedure (Upper Tribunal) Rules 2008 state that;
 - 5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Upper Tribunal may regulate its own procedure.
 - (2) The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.
 - (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may...
 - (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and...
 - (ii) the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case...

8. We are satisfied that the First-tier Tribunal is a more appropriate forum for the determination of the case, as the whole decision had been infected by the wrong standard of proof being applied.

Decision

9. We direct that the appeal be remitted to the First-tier Tribunal sitting at Newcastle for a de novo hearing not before Judge Nazir or Judge Fisher.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
14 February 2024